

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKUNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

-v.-

COLLECTOR'S COFFEE INC., et al.,

Defendants.

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ORDER

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19 Civ. 4355 (VM) (GWG)

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GABRIEL W. GORENSTEIN, UNITED STATES MAGISTRATE JUDGE

This Order addresses the motion of Mykalai Kontilai to compel further deposition testimony from attorney John Culotta (Docket # 872).

As an initial matter, Culotta's deposition took place on February 11, 2021, and Kontilai waited more than a month to raise any issue regarding Culotta's testimony. See Letter from Peter Alan Joseph, filed March 15, 2021 (Docket # 837), at 1. Even when Kontilai raised the issue, he failed to serve Culotta with his letter until the Court noticed the error more than a week later. See Docket # 855. Kontilai's delay in seeking relief must be viewed in light of the fact that Kontilai waited until discovery was about to end to even indicate his intention to take any depositions at all (including Culotta's) and did not schedule Culotta's deposition before the deadline expired. See Docket # 745. In light of this inexcusable delay in seeking relief from the Court, combined with Kontilai's repeated dilatory tactics and past frivolous filings, the Court would deny any further deposition of Culotta for this reason alone.

Moreover, we would deny the deposition pursuant to Fed. R. Civ. P. 26(b)(1). We begin by noting that Kontilai has not even attached a copy of the prior deposition to his motion, so we must rely on his explanation for the specific topic areas on which he seeks testimony. With one exception — "communications between Culotta and Holt regarding Holt falsifying documents," Memorandum of Law in Support, filed April 6, 2021 (Docket # 873), at 1 — those topic areas consist of matters collateral to any claims or defenses in this case. For the same reasons as are given in the Opinion and Order issued April 16, 2021 (Docket # 884) ("Attorney Deposition Ruling") with respect to the motion of Mykalai Kontilai and Veronica Kontilai to depose certain attorneys (Docket # 820), we would be prepared at most to allow a further deposition only as to communications with Holt that relate to allegations actually made in the complaint.

But there is no claim in Holt's deposition or anywhere else that Culotta was actually involved in any communications with the SEC regarding Holt's falsification of documents. Thus, all that Kontilai could hope to get from Culotta is testimony that might contradict Holt's testimony on this question. The Court will not permit such a fishing expedition. For essentially the reasons given in the Attorney Deposition Ruling (at pp. 8-11), we find that no such further testimony is warranted.

Accordingly, the motion to compel (Docket # 872) is denied.

SO ORDERED.

Dated: April 16, 2021
New York, New York



GABRIEL W. KORENSTEIN
United States Magistrate Judge